

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

POLITO’S CHRISTMAS WHOLESALE LLC)

Plaintiff,)

v.)

Civil Action No: _____

BLUE MOUNTAIN CHRISTMAS)
TREE FARM,)

JURY TRIAL REQUESTED

AMANDA SANCHEZ DIAZ d/b/a Blue)
Mountain Christmas Tree Farm,)

AND)

ENRIQUE SANCHEZ GARCIA d/b/a Blue)
Mountain Christmas Tree Farm,)

Defendants.)

Serve: Blue Mountain Christmas Tree Farm
213 Archery Lane
Elk Creek, VA 24326

Amanda Sanchez Diaz d/b/a Blue Mountain Christmas Tree Farm
213 Archery Lane
Elk Creek, VA 24326

Enrique Sanchez Garcia d/b/a Blue Mountain Christmas Tree Farm
213 Archery Lane
Elk Creek, VA 24326

COMPLAINT

1. This action is brought by Polito’s Christmas Wholesale (“Polito’s”) to recover damages arising from Defendants’ breach of contract through their failure to deliver purchased goods and failure to deliver perfect tender.

JURISDICTION AND VENUE

2. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) in that the parties are diverse and the amount in controversy exceeds \$75,000.

3. Venue is proper in the United States District Court for the Western District of Virginia pursuant to 28 U.S.C. §§1391(b) and (c) because the acts underlying this action occurred in the Western District of Virginia and because the Defendant transacts business within the district.

THE PARTIES

4. Polito's Christmas Wholesale is a New Jersey corporation with its principal office in Princeton, New Jersey.

5. Blue Mountain Christmas Tree Farm ("Blue Mountain") is a joint venture, unincorporated proprietorship or other informal entity doing business in Virginia with its principal office in Wytheville by and through Defendants Amanda Sanchez Diaz and Enrique Sanchez Garcia. Upon information and belief, Blue Mountain is not registered with the Virginia State Corporation Commission as a corporation, limited liability company or other legal entity. Defendants Amanda Sanchez Diaz and Enrique Sanchez Garcia (collectively, the "Individual Defendants") are the co-venturers, principals, proprietors, partners, owners, operators and alter egos of Blue Mountain. The Individual Defendants do business as Blue Mountain Christmas Tree Farm.

FACTUAL ALLEGATIONS

6. Polito's is a wholesale seller of goods including Christmas trees and wreaths used during the holiday season. On or around October 4, 2022, Polito's contracted with Blue Mountain, Amanda Sanchez Diaz and Enrique Sanchez Garcia for the purchase of numerous Fraser Fir trees. Specifically, Polito's contracted for the purchase of: (1) 150 4/5' Fraser Firs at \$25 per tree; (2)

500 5/6' Fraser Firs at \$30 per tree; (3) 1000 6/7' Fraser Firs at \$35 per tree; (4) 3,050 7/8' Fraser Firs at \$40 per tree; (5) 100 8/9' Fraser Firs at \$50 per tree; and (6) 210 9/10' Fraser Firs at \$60 per tree, for a total cost of \$193,350. (Exhibit A). Polito's paid a deposit to Blue Mountain in the amount of \$130,000 on October 18, 2022.

7. On or around November 30, 2022, Polito's received shipments of goods from Blue Mountain and the Individual Defendants. However, the goods sent by Blue Mountain failed to conform to the requirements of the contract. Blue Mountain delivered (1) 256 4/5' Fraser Firs; (2) 482 5/6' Fraser Firs; (3) 850 6/7' Fraser Firs; (4) 790 7/8' Fraser Firs; (5) 25 8/9' Fraser Firs at \$50 per tree; and (6) no 9/10' Fraser Firs. This overall under-shipment had a value of only \$83,460, less than half of the agreed upon amount of goods. In addition, the over-shipment of an additional 106 4/5' Fraser Firs constituted \$2,650 worth of unordered goods. Blue Mountain further breached the October 4, 2022 contract by failing to deliver goods directly to Polito's customers as agreed in said contract.

8. Further, the poor condition of the goods did not match the quality of the goods Polito's had been shown by Blue Mountain prior to the contract. (Exhibit B). The goods delivered fell far short of meeting the contractual requirement of perfect tender. (Exhibit C).

9. On or around December 1, 2022, Polito's contacted Blue Mountain to inquire about receiving the remainder of the contracted goods. Blue Mountain through the Individual Defendants then informed Polito's that it had nothing remaining and would not be providing any further goods. (Exhibit D). Blue Mountain's breach has caused significant damage to Polito's goodwill and customers.

10. Blue Mountain's breach of contract caused Polito's to suffer \$73,489.00 in lost profits and \$68,767.00 in other consequential damages. Despite Polito's several good faith

attempts to resolve this matter, Blue Mountain has failed to refund the balance of the deposit, \$44,040.00 or reimburse it for the \$68,767.00 in consequential damages.

11. Polito's further contracted with Blue Mountain and the Individual Defendants for wreaths and garlands and made a \$30,000.00 payment for the order; this order was never fully delivered and there remains a balance of \$24,927.50, which Blue Mountain refuses to return.

12. The full balance due to Polito's is \$211,223.50 plus interest. The aforesaid amount is legally and lawfully due to Polito's from Blue Mountain and the Individual Defendants jointly and severally as a result of the breach of the contract by Blue Mountain and the Individual Defendants as set forth in this Complaint. Polito's has demanded compensatory payment but Blue Mountain and the Individual Defendants have refused to do so.

Wherefore, Polito's respectfully moves that judgement be entered against Defendants Blue Mountain, Amanda Sanchez Diaz, and Enrique Sanchez Garcia jointly and severally in favor of Plaintiff Polito's in an amount not to exceed Two Hundred Seventy-Five Thousand and No/100 Dollars (\$275,000.00) together with pre-judgment interest, post-judgment interest, and taxable Court costs.

Polito's demands trial by jury on all issues triable by jury in this matter.

Respectfully Submitted,

POLITO'S CHRISTMAS WHOLESALE LLC

By: /s/ Paul G. Beers
Of Counsel

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